



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

July 16, 1996

The Honorable Kenny Marchant
Chair
Committee on Financial Institutions
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-074

Re: Whether a county investment officer, under the Public Funds Investment Act, Gov't Code ch. 2256, is responsible for investing county and district clerk trust funds, funds collected by the county tax assessor, and the district attorney hot check fund (ID# 38426)

Dear Representative Marchant:

The Seventy-fourth Legislature amended the Public Funds Investment Act, Gov't Code ch. 2256, (the "act") by enacting House Bill 2459, *see* Act of May 18, 1995, 74th Leg., R.S., ch. 402, § 1, 1995 Tex. Sess. Law Serv. 2958, 2958-69. As amended, the act requires the governing body of an "investing entity" to adopt a written investment policy and to designate an officer as the "investment officer to be responsible for the investment of its funds." Gov't Code § 2256.005(a), (f). You state that the Dallas County Commissioners Court has named the Dallas County Treasurer (the "county treasurer") as the county's investment officer. You ask if the county treasurer is responsible under the act for the investment of county and district clerk trust funds, certain funds collected by the county tax assessor, and the district attorney hot check fund.

The act applies to an "investing entity," an entity described by section 2256.003, *see id.* § 2256.002(5), as follows:

Each governing body of the following entities may purchase, sell, and invest its funds and funds under its control in investments authorized under this subchapter in compliance with investment policies approved by the governing body and according to the standard of care prescribed by Section 2256.006:

(1) a local government

Id. § 2256.003. The act defines "funds" to mean "public funds in the custody of a state agency or local government that: (A) are not required to be deposited in the state treasury; and (B) the investing entity has the authority to invest." *Id.* § 2256.002(3). It is apparent from these provisions that the county investment officer is responsible for the investment of "public funds" in the custody of the county that the county has the authority to invest. Thus, we must determine whether county and district clerk trust funds, funds

collected by county tax assessors, and district attorney hot check funds are "public funds" in the custody of the county that the commissioners court has the authority to invest.

Section 116.112 of the Local Government Code provides the statutory basis for commissioners courts' authority to invest county funds: "The commissioners court may direct the county treasurer to withdraw any county funds deposited in a county depository that are not immediately required to pay obligations of the county and invest those funds as provided by this section unless such an investment or withdrawal is prohibited by law or the withdrawal is contrary to the terms of the depository contract." Local Gov't Code § 116.112(a). "Funds may be invested in accordance with [the act]." *Id.* § 116.112(b).

You describe county and district clerk trust funds as follows: "Certain trust funds of the county and district clerks are invested in financial institutions by the county and district clerks as directed by court orders, while other funds are retained in the depository bank uninvested in accordance with case law and provide earnings credits to Dallas County." We assume that you are referring to funds governed by chapter 117 of the Local Government Code, which sets forth procedures for a county to select a depository for county and district clerk trust funds. *See id.* § 117.021; *see generally* Attorney General Opinion JM-1162 (1990). In the event a county selects a depository under this chapter, a county or district clerk who has legal custody of money deposited in court pending the result of a legal proceeding for a period exceeding three days must deposit the money in the depository. Local Gov't Code § 117.052(a). "The funds deposited shall be carried as a trust fund account in the name of the clerk making the deposit." *Id.* § 117.052(b). The commissioners court may "authorize or require" that trust funds that are not immediately required to be paid under the order of the judge of the court in which the funds were deposited be placed in time deposits. *Id.* § 117.051; *see also id.* § 117.027 (if commissioners court has not selected a depository, money or other item deposited with clerk pending outcome of suit shall be placed in vault).¹

This office addressed the relationship between the act and chapter 117 in Letter Opinion No. 96-023, and concluded as follows:

A sum of money placed in the county trust fund depository is not owned by the county but is only held in trust for the litigant who establishes his or her right to it. . . . The funds are controlled by the clerk subject to the orders of the court. The trust funds are not funds belonging to the county or controlled by the commissioners court

¹In addition, subchapter E of chapter 117, which applies only to a county with a population of 2.4 million or more, authorizes a commissioners court to establish a registry fund with one or more banks. This chapter applies only to certain types of money paid into a court registry for which a district clerk is or may become responsible. *See id.* § 117.112. Money paid into the registry of the court must be deposited by the district clerk into the registry fund at the special depository. *Id.* § 117.119. Money may be paid from the registry fund only on checks or drafts signed by the district clerk on the written order of the court with proper jurisdiction. *Id.* § 117.121. No provision authorizes a commissioners court to invest monies in a registry fund.

within section 2256.003 of the Government Code; and, accordingly, they are not subject to investment pursuant to chapter 2256 of the Government Code. Money deposited in the court pending the result of a legal proceeding must be deposited and handled in compliance with chapter 117 of the Local Government Code.

Letter Opinion No. 96-023 (1996) at 2 (citations omitted).

Next you ask if the county treasurer is responsible for the investment of funds collected by the tax assessor "prior to deposit with the county treasurer." As noted above, under section 116.112 of the Local Government Code, the commissioners court may direct the county treasurer to withdraw and invest county funds deposited in the county depository "that are not immediately required to pay obligations of the county" unless the investment is prohibited by law or contract. Section 116.113(b) of the Local Government Code provides that "[a] county tax assessor-collector shall immediately deposit in the county depository taxes collected on behalf of . . . the county The taxes remain on deposit pending the preparation and settlement of the assessor-collector's report on the tax collections." This provision appears to refer to the monthly reports a tax collector is required to prepare under section 31.10 of the Tax Code. Section 113.021(a) of the Local Government Code provides that funds belonging to a county shall be deposited with the county treasurer by the officer who collects them. It specifies that the county tax assessor-collector must deposit money "in accordance with the procedures prescribed by or under the Tax Code and other laws." Local Gov't Code § 113.021(a). "The county treasurer shall deposit the money in the county depository in a special fund to the credit of the officer who collected the money." *Id.* § 113.021(b).

Under the foregoing provisions, taxes collected by the tax assessor are deposited in the county depository pending their transfer to the county treasurer. *See* Attorney General Opinion H-1181 (1978) at 2 (county tax assessor is required to deposit tax funds in his possession in county depository pending transfer of such funds to county treasurer, relying upon Attorney General Opinion M-167 (1967) at 3) (construing statutory predecessors to Local Gov't Code §§ 113.021, 116.113). It is not clear from your query whether you mean to ask if the county treasurer is responsible for the investment of funds collected by the tax assessor prior to their deposit in the county depository or prior to their transfer to the county treasurer. Under section 116.112, it is clear that the commissioners court has no authority to invest funds prior to their deposit in the county depository. Furthermore, it appears that the commissioners court does not have the authority to invest taxes collected by the tax assessor prior to their transfer to the county treasurer because section 116.113(b) mandates that "the taxes remain on deposit [in the county depository] pending the preparation and settlement of the assessor-collector's report on the tax collections." Taxes collected for the county remain on deposit in the county depository until they are transferred to the county treasurer, and the commissioners court does not have the authority to invest them while they remain on deposit. Thus, in answer to your question, we conclude that the county investment officer is not responsible under the act for the investment of funds collected by the tax assessor prior to their deposit in the county

depository or during the period that they remain on deposit in the county depository prior to their transfer to the county treasurer.

Finally, you ask if the county treasurer is responsible for investing the district attorney's hot check fund. Code of Criminal Procedure article 102.007 authorizes a district attorney (or county attorney or criminal district attorney) to collect a fee upon collecting and processing dishonored or forged checks. Fees collected under this article

shall be deposited in the county treasury in a special fund to be administered by the . . . district attorney Expenditures from this fund shall be at the sole discretion of the attorney and may be used only to defray the salaries and expenses of the prosecutor's office, but in no event may the [attorney] supplement his or her own salary from this fund.

Code Crim. Proc. art. 102.007(f). The district attorney, as opposed to the county commissioners court, has the sole authority to administer the hot check fund. *See, e.g.*, Attorney General Opinions DM-357 (1995) at 5, MW-439 (1982) at 6. The commissioners court does not have the authority to invest monies in the fund. Therefore, we conclude that the county's investment officer is not responsible for the investment of the hot check fund under the act.

S U M M A R Y

Under the Public Funds Investment Act, Gov't Code ch. 2256, a county investment officer is responsible for the investment of "public funds" in the custody of the county that the county has the authority to invest. A county investment officer is not responsible for the investment of a county or district clerk trust fund governed by chapter 117 of the Local Government Code, funds collected by the tax assessor prior to their transfer to the county treasurer, or a district attorney's hot check fund established pursuant to article 102.007 of the Code of Criminal Procedure.

Yours very truly,



Mary R. Crouter
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Opinion Committee